

December 5, 1990

REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
REVISED DRAFT OF LEGISLATIVE LANGUAGE
FOR CREATION OF SPECIAL ACT DISTRICT

Attached hereto is the most current revision of the draft legislative language creating a special act district for the regional treatment and reuse of wastewater.

This draft is the product of a participatory effort involving representatives from the Clean Water Program Governance Advisory Group, including: The City of San Diego, the County of San Diego, the City of National City, the City of Chula Vista, the Padre Dam Municipal Water District and the San Diego County Water Authority.

On October 10, 1990, an earlier draft of the legislation was reviewed by the Public Services and Safety Committee, with the following concerns raised:

1. How should the district be formed?
2. Should directors be elected officials?
3. What should be the mechanism for removal of directors?
4. Should there be provision for directors' salaries or per diem?
5. How should bonds be authorized?
6. What should be the mechanism for exercising eminent domain?
7. What should be the title of the district?
8. How should MBE/WBE goals in contracts be stated?

In preparing the current draft, the working group attempted to be responsive to the Committee's concerns.

Immediately noticeable are provisions labeled "Optional" and provisions labeled "Alternative (A)" and "Alternative (B)." These labels are informational only, for the convenience of the Committee. Once an alternative is selected, the label and opposing alternative will be deleted. Similarly, those optional provisions not selected will be deleted. These provisions so labeled indicate areas where policy decisions are required, or where unanimity was not reached at the October 10 meeting of the Public Services and Safety Committee.

Initially, a decision must be reached upon an appropriate

title for the district. The current revision offers a choice between a general or descriptive title. This responds to Councilmember Bernhardt's suggestion that the title incorporate the term "Reuse."

Chapter 2 of this revised draft addresses the fundamental decision regarding how the district should be formed. Alternative (A) reflects formation by an act of the Legislature, while Alternative (B) provides the mechanism for formation by a vote of the electorate. This also responds to comments made by Councilmember Bernhardt.

The selection by member agencies of directors to the district board is discussed in Chapter 3. Specifically, Section 22 enables appointment to the district board of elected or appointed officials. The removal of an agency's member(s) will not be subject to action by the district's board. Instead, the removal of a board member will be performed by the appointing agency, according to established procedures of that agency. (See Section 24.) Per diem compensation of directors is provided for in Section 28. These provisions respond to comments made by Councilmember Roberts.

Section 57 enables the district to exercise the power of eminent domain. This is merely a skeletal power, subject to all the statutory procedures and restrictions of the law of eminent domain found in Part 3, Title 7, section 1230.010 et seq. of the Code of Civil Procedure. Additionally, it was the consensus of the working group that member agencies would be amply protected through land use controls found in the Government Code.

Chapter 4, section 51 contains the mechanism whereby the district would be enabled to accept the assignment of rights and delegation of duties in the existing sewage disposal agreements, assume the obligations under the consent decree, and assume any

indebtedness incurred by an interim financing issued by The City of San Diego. This section specifically excludes from such assumption any fines or penalties incurred by the City for violations occurring prior to formation of the district.

The provisions regarding debt financing powers of the new district are found in Chapter 5. This chapter includes an optional provision enabling the issuance of general obligation bonds (Section 83). If this option is selected, the provision would require two-thirds voter approval for the issuance of general obligation bonds, as required in Article 5 of the County Sanitation District Act and the state constitution. The chapter also contains provisions for the issuance of revenue bonds. Pursuant to the current draft, it is possible that the district

could actually issue revenue bonds, up to a capped amount, without voter approval. This would only occur if the district was formed by an act of the Legislature.

The power of the district to set rates, collect fees and charges, and levy taxes is contained in Chapter 6. It is important to note that the provisions which enable the levying of taxes must be considered in pari materia with the provision which enables the issuance of general obligation bonds, and prior to proceeding under either of these enabling provisions, two-thirds voter approval will be required. If the district is not to have the power to issue general obligation bonds, then it will similarly not have the power to levy taxes.

In response to Councilmember McCarty's comments regarding the civil service structure for the new district, specific reference to a personnel system has been deleted. The district will be able to establish a personnel system most suitable for its needs, or if desired, it may contract for personnel services.

A concern over maintaining MBE/WBE goals in contracting was raised by Committee Consultant Beltran. The working group was appreciative of these concerns and confident that the new district would share them. However, so as not to clutter the legislative provisions, these concerns would be more appropriately covered in administrative regulations and policy statements drafted by the board once the district is created. The legislative provisions will enable the district to contract in the manner determined by the board, which will be able to specify appropriate equal employment opportunity provisions.

Respectfully submitted,
JOHN W. WITT
City Attorney

RLP:mb:453:(043.1)
Attachment
RC-90-64